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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William R. Montiel, M.D.; Decision and Order

On August 10, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, issued an Order to Show Cause to William R. Montiel, M.D. (hereinafter, Registrant), of Prattville, Alabama. GX 2. The Show Cause Order proposed the revocation of Registrant's authority under his DEA Certificate of Registration to dispense schedule II controlled substances, and the denial of "any applications for renewal or modification of such [s]chedule II authority and any applications for any other DEA registrations with [s]chedule II authority pursuant to 21 U.S.C. § 824(a)(3), because [he has] no state authority to handle controlled substances." *Id.* at 1.

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is registered as a practitioner with authority to dispense controlled substances in schedules II through V under Certificate of Registration No. FM0822812, at the location of 554C McQueen Smith Road, Prattville, Alabama. *Id.* The Order further alleged that this registration does not expire until January 31, 2020. *Id.*

As the substantive ground for the proceeding, the Show Cause Order alleged that "[o]n March 7, 2017, the Medical Licensure Commission of Alabama issued an Order restricting [Registrant's] license to practice medicine in . . . Alabama such that [he] 'shall not prescribe any substance listed in [s]chedule II of the Alabama Controlled Substance Act . . . or any substance listed on the [DEA's] listing of [s]chedule II controlled substances.'" *Id.* at 1-2. The Show Cause Order thus alleged that as a result of the Commission's action, Registrant is "currently without

authority to handle [s]chedule II controlled substances in . . . Alabama, the [S]tate in which [he is] registered with” DEA, and that as a consequence, his schedule II authority is subject to revocation. *Id.* at 1-2.

The Show Cause Order notified Registrant of his right to a hearing or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing either option. *Id.* at 2 (citing 21 CFR 1301.43(a) & (c)). The Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3.

On October 25, 2017, the Government submitted a Request for Final Agency Action (RFAA I). GX 5, at 4. Therein, the Government represented that “[o]n August 10, 2017, personnel from DEA’s Office of Chief Counsel, Diversion and Regulatory Section, mailed a copy of the Order to Registrant’s registered address via first-class United States mail” and that the letter was not returned “as undeliverable.” *Id.* The Government further represented that Registrant had neither requested a hearing, nor submitted a written statement while waiving his right to a hearing, within the 30-day time period following service for electing either option. *Id.* The Government thus maintained that Registrant had waived his right to either a hearing or to submit a written statement and sought a final order.

On review, I held that the Government’s effort at service was “a departure from the Agency traditional practice.” GX 6 (Administrator’s Order, Feb. 6, 2016). I also noted that “the Government cite[d] no authority establishing that a sole effort of mailing by first class mail (with no evidence of delivery to the address) is sufficient to provide constitutionally adequate service for initiating a proceeding under the Due Process Clause.” *Id.* I therefore ordered the Government “to either address why its effort was consistent with the Due Process Clause or to engage in additional reasonable efforts to serve Registrant.” *Id.*

On March 20, 2018, the Government submitted a Second Request for Final Agency Action. RFAA II, at 5. Therein, the Government represents that on August 15, 2017, the case agent travelled to Registrant's registered address to personally serve the Show Cause Order on Registrant. *Id.* at 2. The Government further represents that the case agent met with Registrant and upon informing Registrant that he was there to serve the Show Cause Order, Registrant stated that he had received the Order in the mail the previous day and showed the Order to the case agent who confirmed that it was identical to the Order he planned to serve on Registrant. *Id.* As support for these representations, the Government provided a declaration by the case agent. GX 7.

Based on the case agent's declaration, I now find that Registrant was served with the Show Cause Order on August 14, 2017. In its Second Request, the Government again represents that "Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the" Show Cause Order, to "include[e] the filing of [a] written statement in lieu of a hearing." RFAA II, at 2-3. Because more than 30 days have now passed since the date of service of the Show Cause Order, and Registrant has neither requested a hearing nor submitted a written statement while waiving his right to a hearing, I find that Registrant has waived his right to a hearing or to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Order based on the evidentiary record submitted by the Government. *Id.* §1301.43(e). I make the following factual findings.

FINDINGS

Registrant is the holder of DEA Certificate of Registration No. FM0822812, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a

practitioner, at the registered address of 554C McQueen Smith Road, Prattville, Alabama. GX 1, at 1. This registration does not expire until January 31, 2020. *Id.*

Registrant is also the holder of a medical license issued by the Medical Licensure Commission of Alabama. GX 3, at 2. Following a hearing, on March 7, 2017, the Commission issued an Order which found that Registrant's "treatment of chronic pain patients is not in compliance with the Board of Medical Examiners' guidelines for pain management and the standards for the utilization of controlled substances set out" in various provisions of the Alabama Administrative Code, "in violation of § 34-24-360(23) of the Alabama Code." GX 3, at 2-3. The Commission also found that Registrant's "continued prescribing of" schedule II controlled substances "presents a risk of harm to his patients." *Id.* at 3. The Commission thus restricted Registrant's medical license to prohibit him from prescribing any schedule II controlled substance. *Id.* The Commission's Order became effective at midnight on June 23, 2017. *Id.* at 4 (Commission's Order, May 24, 2017). According to the online records of the Commission of which I take official notice, this restriction remains in effect as of the date of this Order. *See* <http://www.albme.org> (visited April 30, 2018).

DISCUSSION

Under the Controlled Substances Act (CSA), a practitioner's registration grants authority to dispense a controlled substance, which by definition "means to deliver a controlled substance to an ultimate user . . . by, or *pursuant to the lawful order of, a practitioner.*" 21 U.S.C. § 802(10) (emphasis added). Likewise, the CSA defines the "[t]he term 'practitioner' [to] mean[] a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice." *Id.* § 802(21). Finally, under the CSA's registration provision applicable

to a practitioner, “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” *Id.* § 823(f). These provisions thus make clear that a practitioner’s possession of federal authority to dispense controlled substances is generally premised on his possession of authority under state law to do so. *See also id.* § 824(a)(3) (authorizing the suspension or revocation of registration issued under section 823 of the CSA, “upon a finding that the registrant . . . has had . . . [her] State License or registration suspended [or] revoked by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances”).

As the Supreme Court recognized in *United States v. Moore*, 423 U.S. 122, 140-41 (1975), “[i]n the case of a physician this scheme contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice. The federal registration . . . extends no further.”

Thus, to the extent a practitioner is not authorized under state law to dispense certain categories or schedules of controlled substances, he can no longer lawfully dispense them under federal law. *See Kenneth Harold Bull*, 78 FR 62666, 62672, 62676 (2013) (restricting practitioner’s registration to authorize the dispensing of only those controlled substances authorized to dispense under his state license). Accordingly, where a state board takes such action, at a minimum, a practitioner’s CSA registration must be restricted to authorize the dispensing of only those controlled substances which he can lawfully dispense under state law. *See id.*; *see also* 21 U.S.C. § 824(a)(3).

Based on the Commission’s Order, I find that Registrant is currently without authority to prescribe schedule II controlled substance under his Alabama Medical License. Because his

authority under his DEA registration (in Alabama) can only extend as far as his state authority, I will order that his authority to prescribe schedule II controlled substances be revoked and that his registration be restricted to prohibit him from prescribing schedule II controlled substances.¹

ORDER

Pursuant to the authority vested in me by 28 CFR 0.100(b) and 21 U.S.C. § 824(a)(3), I order that the authority of William R. Montiel, M.D., to prescribe schedule II controlled substances under Certificate of Registration No. FM0822812 be, and it hereby is, revoked. I further order that any application of William R. Montiel, M.D., to renew or modify his registration, or for any other registration in the State of Alabama, be, and it hereby is denied, to the extent it seeks authority to prescribe schedule II controlled substances in the State of Alabama. This **ORDER** is **effective immediately**.²

Dated: April 30, 2018.

Robert W. Patterson,

Acting Administrator.

¹ While the Government argues that “Registrant’s [s]chedule II authority should be revoked . . . because Registrant has no state authority to handle [s]chedule II controlled substances in Alabama,” RFAA II, at 4, the various state Orders submitted by the Government address only his authority to prescribe and not to engage in other activities which fall within the definition of dispense, such as administering or direct dispensing, whether under the CSA or Alabama law. See Ala. Code § 20-2-2 (defining the term “dispense” to mean “[t]o deliver a controlled substance to an ultimate user . . . by or pursuant to the lawful order of a practitioner, including the prescribing, [or] administering” of a controlled substance). While it may have been the intent of the Commission to entirely limit Registrant’s schedule II authority, that is not apparent on the face of its Orders.

² I further order that Registrant’s Certificate of Registration be modified to reflect this restriction on his authority. Based on the findings of the Commission, I find that the public interest necessitates that the revocation of his schedule II prescribing authority be effective immediately. 21 CFR 1316.67.

